

ARTICLE 6
SITE LOCATION OF DEVELOPMENT LAW

§ 484-A. Unlicensed pits; temporary licensing exemption

If a borrow pit was between 5 and 30 acres on October 1, 1993 and was not licensed as required under this article, its owner or operator is not required to obtain a license under this article if:

1. Notice of intent to comply. Pursuant to section 490-C, the owner or operator of the pit files a notice of intent to comply no later than:

A. April 1, 1995, for pits having reclaimed or unreclaimed areas that drain externally or having reclaimed or unreclaimed areas where internal drainage is achieved with berms or other structures; or

B. October 1, 1995, for pits where all reclaimed and unreclaimed lands are naturally internally drained; and

2. Adherence to compliance schedule. By October 1, 1996:

A. All reclaimed and unreclaimed areas that were not naturally internally drained on October 1, 1993 are stabilized or reclaimed;

B. All other conditions existing on October 1, 1993 comply with the performance standards under article 7; and

C. All activities conducted after filing a notice of intent to comply are conducted in compliance with article 7.

An unlicensed borrow pit of 5 or more acres is in violation of this article if the owner or operator of that pit does not file a notice of intent to comply under subsection 1. The written enforcement policy for responding to violations referred to in section 343-C, subsection 1 does not apply to the owner or operator of an excavation regulated under article 7.

ARTICLE 7
PERFORMANCE STANDARDS FOR
EXCAVATIONS FOR BORROW, CLAY, TOPSOIL OR SILT

§ 490-A. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Affected land. "Affected land" means reclaimed and unreclaimed land, land that has or will have the overburden removed, land on which stumps, spoil or other solid waste has or will be deposited and storage areas or other land, except natural buffer strips, that will be or has been used in connection with the excavation.

1-A. Excavation. "Excavation" means an excavation for borrow, topsoil, clay or silt, whether alone or in combination.

2. Medium borrow pit. "Medium borrow pit" means a borrow pit that has a total reclaimed and unreclaimed area from 5 to 30 acres and that has:

A. Except as otherwise provided, a working pit not larger than 10 acres; and

B. Natural internal drainage in all reclaimed and unreclaimed areas.

2-A. Natural buffer strip. "Natural buffer strip" means an undisturbed area or belt of land that is covered with trees or other vegetation.

2-B. Naturally internally drained. "Naturally internally drained" means areas of a site that, as a result of the predevelopment topography and interim and final topography produced during development of the site, are and will remain at all times over the course of the development graded so that neither eroded materials nor runoff either crosses the property boundary or enters a protected natural resource, natural buffer strip or other protected area. Areas that rely on man-made structures, including but not limited to berms, dikes, basins or undersized culverts, in order to maintain internal drainage are not considered naturally internally drained.

2-C. Overburden. "Overburden" means earth and other materials naturally lying over the product to be removed.

2-D. Owner or operator. "Owner or operator" means the owner or operator of the excavation.

2-E. Passenger car equivalents at peak hour. "Passenger car equivalents at peak hour" means the number of passenger cars, or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. For purpose of this article, one tractor-trailer combination is the equivalent of 2 passenger cars.

2-F. Primary sand and gravel recharge area. "Primary sand and gravel recharge area" means the surface directly overlying sand and gravel formations that provides direct replenishment of

groundwater in sand and gravel fractured bedrock aquifers. The term does not include areas overlying formations that have been identified as unsaturated and are not contiguous with saturated formations.

3. Private drinking water supply. "Private drinking water supply" means a surface water supply, a dug well, a spring or a hole drilled, driven or bored into the earth that is used to extract drinking water for human consumption and that is not part of a public drinking water supply.

4. Protected natural resource. "Protected natural resource" has the same meaning as in section 480-B, subsection 8.

5. Public drinking water source. "Public drinking water source" means any groundwater well or any surface water source that directly or indirectly serves a water distribution system that has at least 15 service connections or regularly services an average of least 25 individuals daily at least 60 days of the year.

5-A Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic habitat and aquatic resources.

6. Regulator. "Regulator" means:

A. For an excavation located wholly within a municipality that is registered under section 490-I to enforce this article, the municipality; and

B. For all other excavations, the Department of Environmental Protection.

6-A. Significant sand and gravel aquifer. "Significant sand and gravel aquifer" means a deposit of ice-contact and glacial outwash sediment that stores and transmits significant quantities of recoverable water. Significant sand and gravel aquifers are typically located in stratified drift deposits such as eskers, glaciomarine deltas, kames, kame terraces and outwash plains.

6-B. Silt or clay. "Silt" or "clay" means a material that consists of particles of such size that 45% or more of the fraction of those particles able to pass through a 3-inch sieve pass through the United States Standard Number 200 sieve, or a material that exhibits similar erosion potential, difficulty of stabilization or runoff based upon gradation, plasticity, permeability or other relevant criteria.

6-C. Topsoil. "Topsoil" means the top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of such a layer in uncultivated soils.

7. Working pit. "Working pit" means the extraction area, including side slopes, of an excavation for borrow, clay, silt or topsoil. "Working pit" does not include a stockpile area or an area that has a

permanent fixed structure such as an office building, permanent processing facility or fixed fuel storage structure.

§ 490-B. Applicability

Sections 490-A to 490-K apply to any excavation for borrow, clay, topsoil or silt, whether alone or in combination, if the total excavated area on a parcel is 5 or more acres, including reclaimed and unreclaimed areas, and section 490-M applies to a total excavated area of less than 5 acres. This article applies if the excavation is located in whole or in part within an organized area of this State.

A person in possession of a valid site location of development permit for a borrow pit or topsoil, clay or silt mining operation shall operate that pit or operation in compliance with the terms and conditions of the permit. Any modification of the permit must be in conformance with section 484. A person with a permit under article 6 may file a notice of intent to comply under this article. The permit issued under article 6 lapses as of the date a complete notice of intent is filed with the department. If the permittee chooses to substitute a notification pursuant to this article, all terms and conditions that applied to the permit issued pursuant to article 6 are incorporated into the notification approved pursuant to this article.

This article does not apply to:

2. Maine Land Use Regulation Commission pits. An excavation wholly within the jurisdiction of the Maine Land Use Regulation Commission;

4. Excavations reviewed under the laws regarding the protection of natural resources. An excavation to the extent that it is located in a protected natural resource and requires a permit under the laws regarding the protection of natural resources in article 5-A; or

5. Grading preliminary to construction. An excavation or grading preliminary to a construction project unless it is intended to circumvent this article.

§ 490-C. Notice of intent to comply

Except as provided in section 484-A, a person intending to create or operate an excavation under this article must file a notice of intent to comply before the total area of excavation on the parcel equals 5 or more acres excavated since January 1, 1970. Both reclaimed and unreclaimed areas are added together in determining whether this 5-acre threshold is met. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the municipality and each abutting property owner must be mailed at least 7 days prior to filing the notice of intent to comply with the regulator. The notice that is mailed to the regulator must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation. The municipality where the proposed excavation is located may

submit comments to the department if the proposed excavation may pose an unreasonable adverse impact under the standards in section 490-D. Within 30 days of receipt of the notice of intent to comply, the department must respond to the comments made by the municipality.

A notice of intent to comply is not complete unless it includes all the following information:

1. Name, address and telephone number. The name, mailing address and telephone number of the owner and, if different from the owner, the operator;

2. Map and site plan. A location map and site plan drawn to scale showing property boundaries, stockpile areas, existing reclaimed and unreclaimed lands, proposed maximum acreage of all affected lands, all applicable private drinking water supplies or public drinking water sources and all existing or proposed solid waste disposal areas;

3. Parcel description. A parcel description and size, by tax map or deed description;

4. Information on abutters. The names and addresses of abutting property owners;

5. Signed statement. A statement, signed and dated by the owner or operator, certifying that the excavation will be operated in compliance with this article; and

6. Fees. Any fee required by section 490-J.

If the department determines that a notice filed under this section is not complete, the department must notify the owner or operator no later than 45 days after receiving the notice.

§ 490-D. Performance standards

1. Significant wildlife habitat. Affected land may not be located in a significant wildlife habitat, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 5, section 13076. The department may not grant a variance from the provisions of this subsection.

2. Solid waste. Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with chapter 13, including any rules adopted to implement those laws. The department may not grant a variance from the provisions of this subsection.

3. Groundwater protection. Excavation may not occur within 5 feet of the seasonal high water table. A benchmark sufficient to verify the location of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land.

A. A 200-foot separation must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation.

B. A 100-foot separation must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and was in existence prior to that excavation.

C. Separation must be maintained between any excavation and any public drinking water source as follows:

- (1) For systems serving a population of 500 persons or less, the minimum separation must be 300 feet;
- (2) For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;
- (3) For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and
- (4) For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act, the separation must be 1,000 feet.

The department may grant a variance from the provisions of this paragraph upon consultation with the public water supply affected by the excavation. The department may not grant a waiver from the provisions of paragraph A, B or D.

D. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids, and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.

E. Excavation below the seasonal high water table of an area previously designated for potential use as a public drinking water source by a municipality or private water company is prohibited. If the yield of groundwater flow to protected waters or wetlands is not adversely affected, the department may grant a variance allowing excavation below the seasonal high water table of a mapped significant sand and gravel aquifer, or primary sand and gravel recharge area, or an unconsolidated deposit in other locations.

F. In the event of excavation below the seasonal high water table, the operator of a mining activity that affects a public drinking water source or private drinking water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This paragraph is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have.

G. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the limit of excavation and any predevelopment private drinking water supply, and a 1000-foot separation must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company.

The department may grant a variance allowing excavation between 2 and 5 feet of the seasonal high water table. The separation distance requirements described in paragraphs A, B and C do not apply when the private water supply or public drinking water source is owned by the owner of the excavation site.

3-A. Medium borrow pits unlicensed on October 1, 1993. Notwithstanding subsection 3, the following provisions apply to a medium borrow pit that on October 1, 1993 was not licensed under article 6 and on which gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table.

The medium borrow pit owner or operator may not further excavate in areas where gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table unless a variance is granted by the department.

A. The department may not require the medium borrow pit owner or operator to elevate the medium borrow pit floor to 5 feet or more above the seasonal high water table as a condition of operation.

B. Deleted. Laws 1995, ch. 700, § 24.

C. The medium borrow pit owner or operator may reclaim as a pond that area of the medium borrow pit on which gravel had been extracted to a level at or below the seasonal high water table.

4. Natural buffer strip. Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the excavation before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply. The department may not grant a variance from the provisions of this subsection.

5-A. Protected natural resources A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and having the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource

must comply with the applicable permit requirement under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal high water mark of a great pond, river, stream or brook or the upland edge of a freshwater or coastal wetland. The department may not grant a variance from this subsection.

6-A. Public and private roads. A natural buffer strip must be maintained between the working edge of an excavation and a road as follows.

A. A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation.

B. A natural buffer strip at least 100 feet wide must be maintained between the working edge of an excavation and any public road not designated as a scenic highway by the Department of Transportation. A natural buffer strip at least 25 feet wide must be maintained between the working edge of a topsoil excavation and any public road not designated as a scenic highway by the Department of Transportation.

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the person or persons having a right-of-way over the private road.

Except for paragraph B, the department may not grant a variance from the provisions of this subsection. The department may grant a variance from paragraph B, provided that the variance will

not result in the natural buffer strip being reduced to less than 50 feet between the working edge of the excavation and any road and provided that the owner or operator installs visual screening and safety measures as required by the department.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road unless otherwise specifically provided.

6-B. Medium borrow pits unlicensed on October 1, 1993. Notwithstanding subsection 6-A, the following provisions apply to a medium borrow pit that on October 1, 1993 was not licensed under article 6 and on which gravel had been extracted closer than 50 feet to a public or private road.

A. The department may not require the owner or operator of a medium borrow pit to reestablish the required natural buffer strip as a condition of operation.

B. The owner or operator of a medium borrow pit shall regrade and seed the sideslopes to a slope no steeper than 2 horizontal feet for each vertical foot unless otherwise approved by the department.

The owner or operator of a medium borrow pit shall install visual screening and safety measures as required by the department.

7. Property boundary. A natural buffer strip at least 50 feet wide must be maintained between any excavation and any property boundary. A natural buffer strip at least 25 feet wide must be maintained between any topsoil excavation and a property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

8. Erosion and sedimentation control. All reclaimed and unreclaimed areas, except for access roads, must be naturally internally drained at all times unless a variance is obtained from the department.

A. The area of a working pit may not exceed 10 acres.

B. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

C. Sediment may not leave the parcel or enter a protected natural resource.

D. Grubbed areas not internally drained must be stabilized.

E. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.

The department may grant a variance from this subsection, except for paragraphs C, D and E.

9. Surface water protection and storm water management. Surface water discharges from areas not required to be naturally internally drained may not be increased as a result of storm water runoff from storms up to a level of intensity of a 25-year, 24-hour storm. Structures such as detention ponds, retention ponds and undersized culverts may not be used to meet this standard unless a variance is obtained from the department.

Grading or other construction activity on the site may not alter natural drainageways such that the drainage, other than that which occurred before development, adversely affects an adjacent parcel of land, or that any drainageways flowing from an adjacent parcel of land to the parcel are impeded.

10. Stockpiles. Deleted. Laws 1995, ch. 700, § 24.

11. Traffic. The following provisions govern traffic.

A. Entrances and exits of the borrow pit must be located, posted and constructed in accordance with standards for roadways in rules adopted by the board. Adequate sight distances for entering, exiting and stopping must be maintained in accordance with these standards. The department may not grant a variance from the provisions of this subsection. This paragraph is repealed July 1, 1997.

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under article 6. This paragraph takes effect July 1, 1997.

12. Noise. Noise levels may not exceed applicable noise limits in rules adopted by the board.

13. Dust. Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include the application of calcium chloride, providing the manufacturer's labeling guidelines are followed. The department may not grant a variance from the provisions of this subsection.

14. Reclamation. Except as provided in subsection 15, the affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation should be conducted in accordance with the department's best management practices for erosion and sediment control, and must include:

- A. Regrading side slopes to a slope no steeper than 2 1/2 horizontal feet for each vertical foot;
- B. Establishing a vegetative cover by seeding within one year of the completion of excavation. Vegetative cover is acceptable if, within one year of seeding:
 - (1) The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession, sufficient to ensure a 75% survival rate; and
 - (2) The planting of all materials results in permanent 90% ground coverage;
- C. Removing all structures and, once no longer in use, reclaiming all access roads, haul roads and other support roads;
- D. Reclaiming all affected lands within 2 years after final grading; and
- E. Stockpiling soil that is stripped or removed for use in reclaiming disturbed land areas.

The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department may determine adequately secures compliance with this article, conditioned upon the faithful performance of the requirements set forth in this article. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator.

The board may adopt or amend rules to carry out this subsection, including rules relating to operation or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; or the manner of determining when the bond or other security may be discharged. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

The department may grant a variance from paragraph A, provided that the slopes exhibit substantial vegetation and are stable. The department may not assess a fee for a request for a variance from paragraph A. The department may grant a variance from paragraph E if the applicant demonstrates that the soil is not needed for reclamation purposes. The department may not grant a variance from the other provisions of this subsection.

15. Recreational management areas. An owner or operator may request a variance to develop a recreational management area on the affected land as an alternative to reclamation in accordance with

subsection 14. The department may grant a variance under section 490-E if the Off-road Recreational Vehicle Division determines the site is suitable under Title 12, section 1893-A.

§ 490-E. Variances

The owner or operator must comply with the performance standards in section 490-D unless a variance from those performance standards is approved by the department. Except where prohibited by section 490-D, the department may grant a variance from the performance standards in this article if the owner or operator affirmatively demonstrates to the department that the variance does not adversely affect natural resources or existing uses and does not adversely affect the health, safety and general welfare of the public. A variance application must include any fee applicable under section 490-J. The department shall process the variance application according to chapter 2 and the rules adopted by the department for processing an application. An applicant for a variance under this article shall hold a public informational meeting as described in those rules.

The department shall adopt rules that set forth the standards for granting a variance from the performance standards in this article. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. Those rules must be provisionally adopted and submitted to the Legislature for review not later than January 1, 1997. Notwithstanding Title 5, section 8072, subsection 3, the Executive Director of the Legislative Council shall immediately assign those provisionally adopted rules to the joint standing committee of the Legislature having jurisdiction over natural resources matters.

When an owner applies for a variance to allow an excavation to be reclaimed as a pond of at least 10 acres but less than 30 acres in size, the department may require public access as a condition for granting the variance. When an owner applies for a variance to allow an excavation to be reclaimed as a pond of 30 acres or greater in size, the department may grant the variance only if the owner demonstrates that public access to the pond is ensured. The requirement for public access may be met by existing public rights or by granting an easement or other right including a right to travel a reasonable distance by foot to a designated area of the shoreline.

A variance from performance standards may not be granted prior to March 1, 1997 unless the owner or operator requesting the variance has filed a notice of intent to comply under section 490-C prior to the effective date of this paragraph.

The department shall publish a timetable for responding to variance applications in the same manner prescribed in section 344-B. A variance is not valid unless approved by the department and, if a municipality is the regulator, the municipality. In making its decision on variance applications, the department shall consider comments or information received and the compliance record of the owner or operator. The department shall inform the owner or operator of any significant concerns or issues raised.

§ 490-F. Review before expansion

Before expanding an excavation beyond an area that exceeds a total of 10 acres of reclaimed and unreclaimed land and before each additional 10-acre expansion, the owner or operator shall notify the regulator of an intent to expand and must request an inspection. In the same manner as prescribed in section 344-B, the department shall publish a timetable for responding to inspection requests and shall inspect the site within that time period to determine the excavation's compliance with this article and other applicable laws administered by the department. The department may defer an inspection for a reasonable period when winter conditions at the site prevent the department from evaluating an expansion request. The department shall notify the owner or operator of a deferral under this section. Excavation activities may continue after the filing of a notice of an intent to expand. The failure of a regulator to conduct a site visit within a published time period is not sufficient basis for a stop-work order under section 490-H, subsection 1.

At the time of filing a notification of intent to expand, the owner or operator shall pay any fee required by section 490-J.

§ 490-G. Inspections

The regulator may periodically inspect a site, may examine relevant records of the owner or operator and may take samples and perform tests necessary to determine compliance with the provisions of this article.

§ 490-H. Enforcement and penalties

Except as provided in section 490-I, the department shall administer and enforce the provisions of this article.

1. Stop-work order. The regulator may order the owner or operator that is not operating in compliance with this article to cease operations until the noncompliance is corrected.

2. Penalty. A person who violates the provisions of this article commits a civil violation and is subject to the penalties established under section 349. Penalties assessed for enforcement actions taken by the State are payable to the State and penalties assessed for enforcement actions taken by a municipality registered under section 490-I are payable to that municipality. For any action brought by a municipality under this article in which the municipality prevails, the court may require the owner or operator to reimburse the municipality for costs associated with that enforcement action.

3. Reclamation. If, after an opportunity for a hearing, the commissioner determines that the owner of an excavation site or the person who was engaged in the excavation activity at the excavation site has violated this article, the commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation. The person engaged in mining or any affiliated person who guarantees performance at the excavation site is liable for the reasonable expenses of the necessary reclamation. The commissioner may use the bond or other security to meet the reasonable expenses of reclamation.

§ 490-I. Municipal enforcement; registration

This section allows a municipality to register for authority to enforce this article by adopting and submitting to the commissioner an ordinance that meets or exceeds the provisions of this article. The commissioner shall review that ordinance to determine if that ordinance meets the provisions of this article and if the municipality has adequate resources to enforce the provisions of this article. If the commissioner determines that the ordinance meets the provisions of this article and that the municipality has the resources to enforce this article, the commissioner shall register that municipality for authority to enforce this article. Immediately upon approval by the commissioner, primary enforcement authority for this article vests in that municipality. The commissioner may not approve an ordinance under this section unless the ordinance requires that any request for a variance from the standards in the article be approved by the commissioner before that variance is valid.

1. Relation to home rule. Nothing in this section may be construed to limit a municipality's authority under home rule to adopt ordinances regulating borrow, topsoil, clay or silt excavations.

2. Optional participation. Nothing in this article may be construed to require a municipality to adopt any ordinance.

3. Suspension of approval. The commissioner may act to enforce any provision of this article or suspend the registration of a municipality if the commissioner determines that a municipal ordinance no longer conforms to the provisions of this article or that the municipality is not adequately enforcing this article. The commissioner shall notify a municipality of any such determination in writing. Suspension of municipal registration by the commissioner does not void or in any way affect a municipal ordinance or in any way limit the municipality's authority to enforce the provisions of its ordinance.

4. Appeal. A municipality may appeal to the board any decision of the commissioner under this section. Any decision by the board on appeal by a municipality constitutes final agency action.

§ 490-J. Fees

The owner or operator of an excavation being operated under this article must pay the regulator:

1. Initial fee. A fee of \$250 upon filing a notice of intent to comply under section 484-A or 490-C;

2. Annual fee. By March 1st of each year, an annual fee of:

A. Three hundred and fifty dollars for an excavation from which 2,500 cubic yards or more of material will be extracted during that year; and

B. Fifty dollars, for all other excavations. To be eligible for the annual fee under this paragraph, the owner or operator must include with the payment of this fee a signed statement certifying that less than 2,500 cubic yards of material will be extracted during that year;

3. Variance fee. A fee of \$250 for each variance requested under section 490-E, except for the following:

A. A fee of \$500 for a variance to excavate below the seasonal high water table.

B. A fee of \$500 for a variance to create an externally drained pit; and

C. A fee of \$125 for a variance to waive the topsoil salvage requirement; and

4. Notice of intent to expand. A fee of \$250 upon filing a notice of intent to expand under section 490-F.

Notwithstanding any other provision of this section, the total for all fees paid under subsections 1 and 2 for one borrow, clay, topsoil or silt excavation in one calendar year may not exceed \$350.

Payment of the annual fee under subsection 2 is no longer required after reclamation is complete as determined by the department. The department shall inspect the site before making this determination.

§ 490-K. Transfer of ownership or operation

A person who purchases an excavation that is operated under a notice of intent to comply or who obtains operating authority of an excavation that operates under a notice of intent to comply must file within 2 weeks after the purchase or the obtaining of operating authority a notice of intent to comply on a form developed by the department. The new owner or operator may operate the excavation during this 2-week period without having filed a notice of intent to comply, providing the new owner or operator complies with all standards under this article.

§ 490-L. Exemption from common scheme of development Deleted. Laws 1995, ch. 700, § 33.

§ 490-M. Erosion control requirements for clay, topsoil or silt excavations of less than 5 acres.

An excavation of less than 5 acres of land for clay, topsoil, or silt must be conducted and reclaimed in accordance with the following standards.

1. Stabilization and control. Sediment may not leave the parcel or enter a protected natural resource as defined in section 480-B. Properly installed erosion control measures must be in place before the excavation begins. Vegetative cover must be established on all affected land. Topsoil

must be placed, seeded and mulched within 7 days of final grading. Permanent vegetative cover is acceptable for purposes of erosion control if, within one growing season of seeding, the planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate and the planting of all materials in permanent 90% ground coverage.

2. Phases. The excavation must be reclaimed in phases so that the working pit does not exceed 2 acres at any one time.